Akberdin bin Hj Abdul Kader & Anor v Majlis Peguam Malaysia

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–17–02 OF 2001
ABDUL AZIZ MOHAMAD J
14 SEPTEMBER 2001

Legal Profession *— Admission — Period of instruction (pupillage) — Qualification of master — Meaning of 'active practice' — Whether include tenure served in judicial and legal service by advocate and solicitor — Failure of Bar Council to object to plaintiff's petition of admission, whether estoppel applied — Whether court should remove plaintiff from Roll — Legal Professions Act 1976 ss 13(1), 17(3) & 21(1)*

The first plaintiff was admitted as an advocate and solicitor on 1 March 1991. He practised as an advocate and solicitor for three months, ie until 31 May 1991. On 1 June 1991, he joined the judicial and legal service and served as a magistrate for six years until he resigned from the service on 2 June 1997. He resumed private practice on 1 July 1997. While he was in the service he retained his status as an advocate and solicitor. On 17 August 1998, he took the second plaintiff to serve with him as a pupil for the period of pupillage that she was required to satisfactorily serve as one of the conditions to be satisfied before she could be admitted as an advocate and solicitor. On 15 August 1999, the second plaintiff was admitted as an advocate and solicitor. The Bar Council (the defendants) did not object to her petition for admission. On 26 August 1999, the Bar Council wrote to the first plaintiff to say that he was not qualified under s 13(1) of the Legal Profession Act 1976 ('the Act') to be a master to the second plaintiff since the first plaintiff had been in active practice for less than seven years immediately preceding 17 August 1998, the date of commencement of the second plaintiff's pupillage. The Bar Council took the view that the first plaintiff's service in the judicial and legal service did not count as 'active practice'. The plaintiff filed an application seeking for the following declaration: (i) that the meaning of the phrase 'active practice' under s 13(1) includes not only the practice of advocates and solicitors with seven year's standing but also the tenure served in the judicial and legal service by an advocate and solicitor; and (ii) that the order of admission of the second plaintiff was correct, binding, absolute and irreversible and that she had become an advocate and solicitor since the time the order was made.

Held, dismissing the application:

(1) 'Active practice' in s 13(1) of the Act must mean active practice, or which means the same thing as, active practice as an advocate and solicitor. When the draftsman drafted s 13(1), what he omitted to do was to express what kind of active practice, or active practice in what capacity, was it that he had in mind. He did not do so because he thought it was so obvious. The fact that s 21(1)

has the qualifying words 'private' or 'as advocate and solicitor' does not mean that what is left unexpressed in s 13(1) is something different and wider. What the plaintiffs had attempted to do was to persuade the court to construe a term in a statute so as to include within it a meaning that is alien to the commonly accepted meaning of the term (see pp 386F, 386H, 387A–B).

(2) The argument that the Bar Council was estopped from challenging the order of admission of the second plaintiff because they did not object to the second plaintiff's petition for admission was hindered by s 17(3) of the Act (see p 389B–C).

(3) The fact that the court refused the declarations sought for by the plaintiffs should not have the consequence of removing the second plaintiff from the Roll. If her name is to be removed from the Roll as a result of what has transpired on this application, that can only be done under s 17(3) of the Act (see p 390C).

[Bahasa Malaysia summary

Plaintif pertama diterima sebagai seorang peguambela dan peguamcara pada 1 Mac 1991. Beliau beramal sebagai seorang peguambela dan peguamcara selama tiga bulan, iaitu sehingga 31 Mei 1991. Pada 1 Jun 1991, beliau telah menyertai perkhidmatan kehakiman dan undang-undang dan berkhidmat sebagai seorang majistret selama enam tahun sebelum meninggalkan jawatan tersebut pada 2 Jun 1997. Beliau meneruskan amalan persendirian semula pada 1 Julai 1997. Semasa beliau masih berkhidmat, beliau telah mengekalkan tarafnya sebagai seorang peguambela dan peguamcara. Pada 17 Ogos 1998, beliau telah mengambil plaintif kedua untuk sebagai seorang pelatih (pupil) untuk tempoh latihan yang perlu dijalaninya sebagai salah satu syarat yang harus dipenuhi sebelum ia boleh diterima sebagai seorang peguambela dan peguamcara. Pada 15 Ogos 1999, plaintif kedua diterima sebagai seorang peguambela dan peguamcara. Majlis Peguam tidak membantah terhadap petisyennya untuk kemasukan. Pada 26 Ogos 1999, Majlis Peguam telah menulis kepada plaintif pertama untuk memaklumkan bahawa beliau tidak berkelayakan di bawah s 13(1) Akta Profesyen Undang-Undang 1976 ('Akta tersebut') untuk menjadi seorang pengetua (master) kepada plaintif kedua kerana plaintif pertama telah berada dalam amalan aktif kurang daripada tujuh tahun sebaik sahaja sebelum 17 Ogos 1998, tarikh permulaan tempoh latihan plaintif kedua. Majlis Peguam berpendapat bahawa khidmat plaintif pertama dalam perkhidmatan kehakiman dan undang-undang tidak dianggap sebagai 'active practice'. Plaintif memfailkan satu permohonan meminta perisytiharan berikut, bahawa: (i) maksud ungkapan 'active practice' di bawah s 13(1) termasuk bukan sahaja amalan peguambela dan peguamcara dengan taraf tujuh tahun malah juga jangkamasa berkhidmat dengan perkhidmatan kehakiman dan undang-undang oleh seorang peguambela dan peguamcara; dan (ii) perintah

kemasukan plaintif kedua adalah betul, mengikat, mutlak dan tidak boleh diakaskan dan bahawa beliau telah menjadi seorang peguambela dan peguamcara sejak perintah tersebut dibuat.

Diputuskan, menolak permohonan tersebut:

(1) 'Active practice' dalam s 13(1) Akta tersebut mesti bermaksud amalan aktif, atau yang maksudnya sama dengan, amalan aktif sebagai seorang peguambela dan peguamcara. Apabila pengubal undang-undang mendraf s 13(1), apa yang tidak dilakukannya adalah menyatakan apakah jenis amalan aktif, atau amalan aktif dalam keupayaan yang macam manakah, yang dimaksudkan oleh beliau. Beliau tidak berbuat demikian kerana beliau menyangkakannya amat jelas sekali. Hakikat bahawa s 21(1) mempunyai perkataan-perkataan bersyarat 'private' atau 'as advocate and solicitor' tidak bermaksud bahawa apa yang tidak dinyatakan dalam s 13(1) adalah sesuatu yang berlainan dan lebih luas. Apa yang cuba dilakukan oleh plaintif-plaintif adalah untuk meyakinkan mahkamah supaya mentafsir satu terma dalam suatu hukum kanun supaya termasuk dalam lingkungannya satu maksud yang asing daripada maksud terma yang diterima pada lazimnya (lihat ms 386F, 386H, 387A–B).

(2) Hujah bahawa Majlis Peguam diestop daripada mencabar perintah kemasukan plaintif kedua kerana mereka tidak membantah terhadap petisyen plaintif kedua untuk kemasukan adalah dihalang oleh s 17(3) Akta tersebut (lihat ms 389B–C).

(3) Hakikat bahawa mahkamah menolak perisytiharan yang dipohon oleh plaintif-plaintif tidak harus mengakibatkan penyingkiran plaintif kedua daripada Daftar tersebut. Sekiranya nama beliau harus disingkirkan daripada Daftar tersebut akibat apa yang telah berlaku atas permohonan ini, ini hanya boleh dilakukan di bawah s 17(3) Akta tersebut (lihat ms 390C).]

Notes

For cases on pupillage, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1383–1384.

Legislation referred to

Advocates and Solicitors Ordinance 1947 s 5(3)
Legal Profession Act 1976 ss 13(1), (3)(b), 16, 17(3), 21(1), (3), 36(2)

Wong Kian Kheong (*Akberdin & Co*) for the plaintiffs.
Hj Sulaiman Abdullah (Malaysian Bar Council) for the defendants.

Abdul Aziz Mohamad J:. The first plaintiff was admitted as an advocate and solicitor on 1 March 1991. He practised as an advocate and solicitor for three months, that is until 31 May 1991. On 1 June 1991, he joined the

judicial and legal service and served as a magistrate for six years until he resigned from the service on 2 June 1997. He resumed private practice on 1 July 1997. While he was in the service, he retained his status as an advocate and solicitor.

On 17 August 1998, he took the second plaintiff to serve with him as a pupil, the period of pupilage that she was required to satisfactorily serve as one of the conditions to be satisfied before she could be admitted as an advocate and solicitor, he becoming the master. Almost a year later, on 15 July 1999, the second plaintiff was admitted as an advocate and solicitor and thereafter practiced in that capacity with the first plaintiff's firm. The Bar Council, the defendants here, did not object to her petition for admission. Neither did the Attorney General or the State Bar Committee, the two other parties who were, under s 16 of the Legal Profession Act 1976 ('the Act'), entitled to object. Earlier on, when the first plaintiff, as master, applied for permission under s 36(2) of the Act for the second plaintiff to appear in court for the limited purposes mentioned in the section, neither the Bar Council nor the State Bar Committee had objected to the first plaintiff's standing.

On 26 August 1999, less than two months after the second plaintiff's admission, the Bar Council wrote to the first plaintiff to say that in their view, going by their records, he was not qualified under s 13(1) of the Act to be a master to the second plaintiff, and to ask for an explanation to enable them to determine the appropriate action to be taken.

Section 13(1) of the Act provides as follows:

> Subject to sub-s (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupilage.
>
> Provided that the Bar Council may on special grounds allow a pupil to serve his period of pupillage with an advocate and solicitor of less than seven years standing.

The Bar Council in their letter, said in effect that the first plaintiff did not qualify as a master because he had been in active practice for less than seven years immediately preceding 17 August 1998, the date of commencement of the second plaintiff's pupillage. The Bar Council obviously took the view that the first plaintiff's service in the judicial and legal service did not count as 'active practice'. Counting backwards from 17 August 1998 and excluding the period of such service but including the initial period of active practice, the first plaintiff had a period of active practice of almost one year and five months, and I cannot think how the period of two years and two months mentioned in the Bar Council's letter was reckoned. In the letter, the Bar Council said that the first plaintiff had, on 1 September 1998, after the commencement of the second plaintiff's pupillage, declared in the 'Form concerning Particulars of Master' that he had seven years of active practice.

The first plaintiff in his reply letter dated 24 September 1999 said in effect that he interpreted the words 'active practice' in s 13(1) of the Act as including service in the legal and judicial service.

By this application filed on 21 February 2001, the plaintiffs seek four declarations, but I think there are effectively two, because the second and the third, which I need not set out, are directly dependent on the first, which, as prayed for, is in the following terms:

> ... a declaration that the meaning of the phrase 'active practice' under s 13(1) … includes not only the practice of advocates and solicitors with seven (7) years standing but also the tenure served in the judicial and legal service by an advocate and solicitor.

There is no doubt from the wording of s 13(1) of the Act, as the plaintiffs themselves seem to recognize by the way in which they framed the first declaration, that during the period of pupillage and during the seven years immediately preceding the date of commencement of the pupillage, the master must be an advocate and solicitor, as the first plaintiff in fact was during that period and the seven years. But that is not enough. The master must also, during that period and the seven years, be in active practice. Those two requirements for the period and the seven years are, to my mind, what the effect of the phrase 'is and has been' in the section is.

Therefore, looking at the proposed declaration, which is framed in line with the terms of s 13(1) of the Act and is therefore correctly framed, in my view, the question, and the only question, that arises from it is, is serving in the judicial and legal practice being 'in active practice' for the purposes of s 13(1) of the Act?

If the answer to that question were in the affirmative, the consequence would be that during the period of pupillage and during the seven years, a master could be an advocate and solicitor serving in the judicial and legal service. But Mr Wong Kian Kheong for the plaintiffs is unable to stomach such a consequence. That is why right at the beginning of his submission, he put the question in a somewhat weird way by reference to the actual circumstances of the first plaintiff. I have not been able to record exactly the way in which he put the question, but it was a way which indicated that he would accept service in the judicial and legal service as active practice only if it were sandwiched between two periods of private practice, just as in the case of the first plaintiff. I do not find that to be a valid way of putting the question. It is not justified by the manner in which the first declaration is framed or by the terms of s 13(1) of the Act. The proper way is the way that I have set out, with the consequence that I have set out if the answer were in the affirmative, and if that consequence is unpalatable it is because an answer in the affirmative is unacceptable and is not the right answer. I am entirely in agreement with Mr Wong in being unable to accept such a consequence, and that in itself is a compelling reason for rejecting an answer in the affirmative.

Mr Wong referred to certain other provisions in the Act where the term 'active practice' is used with a qualification, or in association with words that are not present in s 13(1) of the Act and that renders it beyond question that what is intended in those provisions is private practice.

Paragraph (b) of s 13(3) of the Act sets out one of the qualifications for exemption from the required period of pupillage. The paragraph concerns

a person who has been a pupil or read in the chambers of 'a legal practitioner in active private practice' in the Commonwealth. The word 'private' is present.

Paragraph (d) of s 13(3) of the Act specifies another qualification for exemption from the required period of pupillage. Paragraph (d) is about a person who has been engaged 'in active practice as a legal practitioner' by whatever name called in any part of the Commonwealth. The word 'private' is absent, but 'active practice' is qualified by 'as a legal practitioner'.

Then, there is s 21(1) of the Act which is in the following terms:

> No advocate and solicitor shall, without the special leave in writing of the Board, qualify as a principal unless he has been in active practice as an advocate and solicitor in Malaysia for a period of not less than seven years immediately preceding the commencement of the articles and is in active practice.

The term 'active practice' first appearing there is qualified by the words 'as an advocate and solicitor'.

Section 21(3) of the Act prohibits a principal from taking or retaining any articled clerk after he has ceased from 'active practice as an advocate and solicitor …'. The term 'active practice' is there similarly qualified.

Mr Wong argued that if Parliament had intended to confine 'active practice' in s 13(1) of the Act to practice, or to practice as an advocate and solicitor, it would have expressed its intention in the section as it has expressed it in those other provisions, and since in the section such an intention has not been expressed, Parliament could not have there intended to so confine 'active practice'. Mr Wong argued that the differences in wording between s 13(1) of the Act and the other provisions give rise to a difference in interpretation.

I do not think that what we have here is the kind of differences in wording that give rise to a different interpretation. When the draftsman drafted s 13(1) of the Act, what he omitted to do was to express what kind of active practice, or active practice in what capacity, that he had in mind. And I think he did not do so because he thought it was so obvious. When I first read s 13(1) of the Act on its own, before hearing any argument, I straight away understood 'practice' to mean private practice because I would not term service in the judicial and legal service as practice. The draftsman too must have assumed that no one would so construe the word 'practice'. So alien is the ordinarily received concept of 'practice' to service in the judicial and legal service that if the draftsman had intended to encompass such service in the idea represented by the words 'active practice' he would have used other words to achieve his intention. That the draftsman, when he came to draft ss 13(3)(b) and 21(1) of the Act — just to take those two provisions — did express what he did not express in s 13(1) of the Act. That is by the qualifying words 'private' or 'as an advocate and solicitor', does not mean that what is left unexpressed in s 13(1) of the Act is something different and wider. While it is true that, literally, there are differences in wording between s 13(1) of the Act, on the one hand, and those various other provisions, on the other hand, altogether

they give a strong impression of unity of thought that cannot be dispelled by the differences, so much so that I would say that what has been expressed in those other provisions represents what is left unexpressed in s 13(1) of the Act. What Mr Wong has attempted to do is to persuade me to construe a term in a statute so as to include within it a meaning that is alien to the commonly accepted meaning of the term. And to seek to do so by dint of the existence in other parts of the statute of the use of the term with qualifications that consist with the ordinarily-accepted meaning of the term and do not even hint at the alien meaning. I do not think that that is an acceptable way of construing a statue. In my judgment, 'active practice' in s 13(1) of the Act must mean active private practice or, which means the same thing, active practice as an advocate and solicitor.

Mr Wong also pointed out the fact that s 5(3) of the repealed predecessor, Advocates and Solicitors Ordinance 1947, used different words to describe the qualifications of a master, namely, 'a practicing practitioner of not less than seven years' standing at the Bar of the Federated Malay States, or one of the Straits Settlements, or of the State of Johore, or of the Malayan Union or of any two or more of such Bars'. He focused on the words 'not less than seven years standing at the Bar' and said that if Parliament had intended the seven years' active practice in s 13(1) to refer to private practice or practice as an advocate and solicitor, Parliament would have used those words. I will simply say that Parliament would not, in any event, have used those words in s 13(1) of the Act because those words were used in s 5(3) because it was necessary to use them then in the circumstances of the section, and because there was no necessity to use them now to convey the intention of s 13(1) of the Act. The words that the draftsman would have used, had he anticipated that what he intended would be misunderstood are 'active private practice' or 'active practice as an advocate and solicitor', although, considering what I would call the pattern of expression in those various provisions, I think the fitting choice would been the latter words.

For pattern of expression, I think the best and nearest comparison for s 13(1) is s 21(1). In s 13(1) of the Act, the expression is 'an advocate and solicitor … in active practice'. It consists of two elements, that is, one, an advocate and solicitor as the subject and, two, the work that he has to be in, that is active practice. It lacks the element of the capacity in which the subject advocate and solicitor has to be in the work. In s 21(1) of the Act, the expression is 'advocate and solicitor … in active practice as an advocate and solicitor'. It has the same two elements plus a third element that is missing in s 13(1) of the Act, namely the capacity in which the subject advocate and solicitor has to be in the work of private practice, and the capacity is 'as an advocate and solicitor'.

Since the subject in the two sections is an advocate and solicitor, if the capacity was missing in s 21(1) of the Act, and if it were asked in what capacity is it that the two sections require him to be in active practice, it would be obvious that it is as an advocate and solicitor. When one speaks of a person being at work, it will not be obvious what the capacity in which he is at work is. But when one refers to a person specifically according to his

vocational status as, say, a teacher, and speaks of a teacher being or having to be at work, one obviously means at work in his capacity as a teacher. In s 21(1) of the Act, the draftsman took the trouble to express the capacity 'as an advocate and solicitor', which he did not do in s 13(1) of the Act, and that was because, as I said, he must have thought that the capacity was obvious. That he did express the capacity in s 21(1) of the Act is, I think, merely a failure to be impeccably consistent. Had he anticipated that what he intended in s 13(1) of the Act would be misunderstood, to be impeccably consistent, he would have qualified 'active practice' in s 13(1) of the Act with the words 'as an advocate and solicitor', although qualifying 'active practice' with the word 'private' in between the two words would also have served the purpose.

Mr Wong would construe 'practice' in s 13(1) of the Act to mean 'practice of law' because he referred to the meaning of that term in *Black's Law Dictionary* (7th Ed). Of course, as to what the 'practice' in the section is of, it must be the law. Primarily, that dictionary gives 'practice of law' the meaning of private practice. It says that it is 'the professional work of a duly licensed lawyer, encompassing a broad range of services such as …', and then follows an enumeration of some of the services. But Mr Wong relied on a secondary meaning, which is expressed thus: 'The term also includes activities that comparatively few lawyers engage in but that require legal expertise, such as drafting legislation and court rules'. I think it is unsafe to apply that secondary meaning for the purposes of interpreting s 13(1) of the Act without true knowledge of the system prevailing in the jurisdiction from which the meaning is derived, or of the actual contexts in which the term 'practice of law' is commonly used with such a meaning. The meaning there focuses on specific specialized activities which few lawyers engage in. Drafting legislation and court rules are particularly mentioned. Does the meaning encompass the work of a government legislative draftsman? There would arise a problem from applying the meaning literally to the position in this country, because it would result in officers in the judicial and legal service who do legislative drafting to be considered as in active practice of law, and others who do not as not being in active practice of law. And applying the meaning to the first plaintiff particularly, he would not qualify because he was serving as a magistrate and it cannot be said that the activities of a magistrate require legal expertise.

This brings me to something that Mr Wong said to advance an argument about the public protection purpose of s 13(1) of the Act that was made in support of a purposive interpretation of the section. He said that a person serving in the judicial and legal service is in no worse position as regards knowledge of the law and of the practice of the law than a private practitioner. I shall only say that I believe, from my own observation and limited experience, not having been in private practice, that there are many things that one does not learn or encounter in the service about the practice of the law that one learns or encounters in private practice.

In view of my opinion as to the meaning of active practice in s 13(1) of the Act, the first declaration, and with it the second and the third, must be refused.

The fourth declaration is a declaration that the order of admission of the second plaintiff of 15 July 1999 is correct, binding, absolute and irreversible and that she has become an advocate and solicitor since the time the order was made.

Mr Wong's submission in support of the fourth declaration comes down to this, that notwithstanding that the second plaintiff may not have satisfied s 13(1) of the Act, the Bar Council is estopped from challenging the order of admission of 15 July 1999 because they did not object to the second plaintiff's petition for admission or the first plaintiff's earlier application under s 36(2) of the Act, thereby intentionally permitting the first plaintiff to believe that he was qualified as a master.

In my judgment, the estoppel argument is hindered by s 17(3) of the Act, which provides as follows:

> If at any time after the admission and enrolment of any petitioner as an advocate and solicitor, it is shown to the satisfaction of the court that any petition, affidavit, certificate or other document filed by a petitioner contains any statement which is false or misleading in substance or a suppression of any material fact the name of the petitioner may be removed from the Roll.

It recognizes by implication that everything may have appeared to be alright to everybody at the time of admission, but yet something may be found to be not right after admission, so that the advocate and solicitor concerned is at risk of being removed from the Roll. It implies that the fact that the if Bar Council does not object at the time of admission, it does not mean that they guarantee that nothing is wrong with the petition. It only means that as far as they can see at the time, everything is alright. They are given a right to object to admission, but the right does not come with a duty to the petitioner to ensure that the petition is in order. Of course, the fact that a petition has to be served on them and they have a right to object to a petition implies that they are expected to carry out a measure of verification of the petition, but the expectation is that of the public, and if fulfilling that expectation is a duty, it is a duty that they owe to the public, so that if they disappoint the expectation, and a person who is not qualified in every sense is admitted, they may be subject to public criticism, but the petitioner or his master cannot hold it against them so as to bar them from acting to put matters right. The Bar Council owes no duty to a petitioner or his master to ensure that they have the necessary qualifications in relation to the petitioner's admission. They are not dependent on the Bar Council in that respect. The duty is sorely theirs to ascertain whether or not they are qualified.

There is another way of looking at the question of the fourth declaration. It is sought by the plaintiffs. This is their application, which is made as a result of some arrangement or understanding with the Bar Council. Essentially what the Bar Council have been doing as regards the fourth declaration is to oppose the making of it. Whether or not the Bar Council is estopped from opposing it, the declaration cannot be made in view of the fact that the second plaintiff is liable to be removed from the Roll under s 17(3) of the Act, and such a declaration might embarrass a decision

under that section, which is undesirable. Alternatively, if it will not have such an effect, the declaration will be in vain because no one is or will be challenging the order of admission or the fact that the second defendant has become an advocate and solicitor since the order was made. The jeopardy that the second plaintiff will face as a result of my interpretation of s 13(1) of the Act is the removal from the Roll under s 17(3) of the Act, not a reversal of the order of admission.

The fourth declaration must, therefore, be refused.

That brings me to another consideration. I mentioned this to Tuan Haji Sulaiman for the Bar Council in the course of submission and he seemed content to accept my decision on the point, and strictly I need not go into it to dispose of the present application, but I think it will be useful to set it down with a little elaboration. The point is this. With the refusal of the fourth declaration, the second plaintiff's name is nevertheless still on the Roll. If her name is to be removed from the Roll as a result of what has transpired on this application, that can only be done under s 17(3) of the Act. The question is whether the fact that I refuse the first declaration because I find, on a proper construction of s 13(1) of the Act, that the second plaintiff has not served her period of pupillage with a master who was qualified under the section is to be followed inevitably with the consequence that the name of the second plaintiff be removed from the Roll under s 17(3) of the Act. I do not think that it should. In the first place, if the plaintiffs had not made the present application, the court will have to be moved by the Bar Council or some other party with the proper locus to act under s 17(3) of the Act. I think the position should not be different just because the plaintiffs have come to court first to clear themselves. There is virtue in leaving it to the Bar Council to expressly move the court in that they will have an apportuntiy, if they have not already done so, to deliberate on the matter before deciding to act. In the second place, the Bar Council will have to bring their case within the terms of s 17(3) of the Act, which would require the offending 'petition, affidavit, certificate or other document filed by [the] petitioner' to be before the court, and it is not before the court presently. As has been seen, it is said in the present application to be the 'Form concerning Particulars of Master'. In the third place, considering the nature and circumstances of this case, there may be questions and principles to be considered and debated, and considerations to be taken into account, for a decision under s 17(3) of the Act, for which the necessary factual material is not before the court.

I dismiss this application. As agreed between the plaintiffs and the Bar Council, I make no order as to costs.

Application dismissed.

Reported by Jafisah Jaafar